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Of Attorneys for Defendant

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

EUGENE DIVISION

<b>EDGAR KING, an individual consumer, and CAROLYN KING, an individual consumer,</b>	)	Civil No. 6:18-cv-02203-MK
	)	
Plaintiffs,	)	<b>ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIM</b>
v.	)	
<b>VIAL FOTHERINGHAM LLP, a domestic limited liability partnership</b>	)	<b>DEMAND FOR JURY TRIAL</b>
	)	
Defendant.		

For its answer to Plaintiffs' Complaint, Defendant Vial Fotheringham LLP ("Defendant"), answers and alleges as follows:

1. Admits that this Court has subject matter jurisdiction as set forth in the introduction.
2. Admits paragraphs 1 and 2 upon information and belief.
3. Admits paragraph 3.
4. With respect to paragraph 4, admits that venue is proper, but denies the remaining allegations of paragraph 4.

ANSWER, AFFIRMATIVE DEFENSES  
AND COUNTERCLAIM - PAGE 1  
CASE NO. 6:18-cv-02203-MK

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5. With respect to paragraph 5, admits upon information and belief that Plaintiffs Edgar King and Carolyn King (collectively, "Plaintiffs") purchased property located at 60990 Snowbrush Drive, Bend, Oregon 97702 in 2006 and at that time agreed to become members of the River Canyon Estates Homeowners' Association, Inc. ("HOA"). Lacks sufficient knowledge or information to form a belief as to whether the property at issue was or is Plaintiffs' principal residence, and therefore denies the same.

6. With respect to paragraph 6, admits that Plaintiffs did not pay HOA assessments as required, but denies the remaining allegations of paragraph 6.

7. Admits paragraphs 7 and 8.

8. With respect to paragraph 9, admits that the Declaration, Bylaws, Resolution, ORS 94.550, ORS 94.630(1)(n) and ORS 94.719 provide that the HOA is entitled to recover its reasonable attorney fees and costs and expenses in any suit or action brought by the Association to foreclose its lien or collect delinquent assessments.

9. Admits paragraphs 10, 11, 12, 13, 14 and 15.

10. Denies paragraph 16.

11. With respect to paragraph 17, admits that Defendant issued writs of garnishment against Plaintiffs on or about December 8, 2017, but denies the remaining allegations of paragraph 17.

12. With respect to paragraph 18, admits that Defendant received funds from garnishees, but denies the remaining allegations of paragraph 18.

13. With respect to paragraph 19, admits that Mr. King communicated with Defendant about the garnishments, but denies the remaining allegations of paragraph 19.

14. With respect to paragraph 20, admits that Defendant returned some funds received from garnishees, but denies the remaining allegations of paragraph 20.

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ANSWER, AFFIRMATIVE DEFENSES  
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15. With respect to paragraph 21, admits that Defendant caused to be filed a Satisfaction of Judgment on February 10, 2018, which document speaks for itself. Denies that Plaintiffs' characterization of the Satisfaction is complete or accurate.

16. With respect to paragraphs 22, 23 and 24, admits that Plaintiff Edgar King engaged in settlement discussions with Defendant in 2018, but denies the remaining allegations of paragraphs 22, 23 and 24.

17. With respect to paragraph 25, admits that Defendant sent a letter to Plaintiffs dated August 24, 2018, which letter speaks for itself. Denies that Plaintiffs' characterization of the letter is complete or accurate.

18. Denies paragraph 26.

19. Lacks sufficient knowledge or information to form a belief as to the allegations of paragraphs 27 and 28 and therefore denies the same.

20. Admits paragraph 29.

21. Denies paragraphs 30, 31, 32, 33, 34, 35 and 36.

22. Admits paragraph 37.

23. Lacks sufficient knowledge or information to form a belief as to the allegations of paragraph 38 and therefore denies the same.

24. Denies paragraphs 39, 40, 41, 42, 43, 44, 45 and 46.

## **AFFIRMATIVE DEFENSES**

**For its First Affirmative Defense**, Defendant alleges:

25. Plaintiffs have failed to state facts sufficient to allege a claim for relief.

**For its Second Affirmative Defense**, Defendant alleges:

26. Plaintiffs' claims are barred by the applicable statute of limitations.

**For its Third Affirmative Defense**, Defendant alleges:

27. Plaintiffs' claims are barred by the doctrine of estoppel.

**For its Fourth Affirmative Defense**, Defendant alleges:

28. Plaintiffs' claims are barred by the Rooker-Feldman doctrine.

**For its Fifth Affirmative Defense**, Defendant alleges:

29. To the extent there is any violation of the FDCPA proven by Plaintiffs, any such violation was not intentional, and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

### **COUNTERCLAIM**

**For its Counterclaim**, Defendant alleges:

30. Plaintiffs' claims pursuant to ORS 646.608 are not objectively reasonable.

31. Defendant is entitled to an award of reasonable attorney fees and costs incurred in defending against Plaintiffs' claims pursuant to ORS 646.638(3).

WHEREFORE, Defendant prays for judgment as follows:

1. That each of Plaintiffs' claims be dismissed, with prejudice.
2. For an award to Defendant of costs and disbursements incurred herein.
3. For an award to Defendant of reasonable attorney fees pursuant to ORS 646.638(3).

DATED this 6th day of February, 2019.

MC EWEN GISVOLD LLP

By: *s/ Jonathan M. Radmacher*  
Jonathan M. Radmacher, OSB No. 924314  
Katie Jo Johnson, OSB No. 063823  
Attorneys for Defendant

## CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2019, I served the foregoing **ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIM** on the persons listed below by the methods indicated below.

Tim Eblen  
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 ECF

Dated: February 6, 2019

MC EWEN GISVOLD LLP

By: *s/ Jonathan M. Radmacher*

Jonathan M. Radmacher, OSB No. 924314  
Katie Jo Johnson, OSB No. 063823  
Of Attorneys for Defendant

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